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## **VI. RESALE**

Two resale issues between AT&T and Verizon VA remain for Commission resolution: (i) resale of advanced services (Issue V-9) and (ii) resale of vertical features on a stand-alone basis (Issue V-10). In both cases, AT&T is attempting to obtain contract rights that are inconsistent with applicable law.

AT&T mistakenly claims that its assertions regarding what is “technically feasible” are dispositive of the issues. With respect to resale of advanced services (Issue V-9), AT&T proposes unnecessary contract language and seeks to impose contract requirements that are premature relative to the industry’s opportunities to address the technical feasibility of undeveloped products and processes. With respect to resale of vertical features on a stand-alone basis (Issue V-10), that which is “technically feasible” is irrelevant to Verizon VA’s obligation to make telecommunications services available for resale at the wholesale discount. Accordingly, the Commission should adopt Verizon VA’s proposed contract language and reject AT&T’s proposed provisions on these two resale issues.

**Issue V-9      DSL/Line Splitting/Line Sharing**

**AT&T              Under what terms and conditions must Verizon and its data affiliate or their successors or assigns allow AT&T to purchase advanced services for resale?**

**A.      OVERVIEW**

Verizon VA has proposed contract language that should resolve any issue relating to its provision of advanced services for resale generally. However, the Commission should reject AT&T's unnecessary attempt to include provisions for a service that AT&T will soon be able to purchase through federal tariffs. Finally, there is no basis on which to conclude that AT&T's request for resale of advanced services over UNE-P and UNE-Loop is either technically feasible or legally required.

**B.      DISCUSSION**

As originally raised by AT&T, there were two general disputes underlying this issue. The first issue related to Verizon VA's ability to provide resale of advanced services in light of the *BA/GTE Merger Order* conditions preventing Verizon from offering any advanced services. That is, the first issue related to the obligation of Verizon's data affiliate. Verizon VA has proposed contract language that should resolve this portion of the parties' dispute.

The second issue relates to AT&T's claim that Verizon VA must provide advanced services for resale when Verizon VA is not the underlying voice provider. That is, AT&T seeks contract language that would obligate Verizon VA to provide advanced services for resale over (i) resold lines, (ii) UNE-P, and (iii) UNE-Loop. It is this claim that remains the crux of the parties' failure to agree to contract language.

- **Resale Of Advanced Services Over Resold Lines**

AT&T seeks to impose unnecessary contract requirements that that would allow AT&T to obtain advanced services for resale over a resold voice line. Verizon has developed a new

service known as “DSL Over Resold Lines,” which will be available in Virginia through an amendment to VADI’s FCC Tariff No. 1. There is no need to include specific interconnection agreement language for a service that AT&T may purchase through a federal tariff.

- **Resale Of Advanced Services Over UNE-P and UNE-Loop**

AT&T’s demand that it be allowed to resell advanced services over UNE-P and UNE-Loop must be rejected. Verizon VA cannot be required to make DSL available for resale on unbundled loops and platforms when it does not -- and is not required to -- provide DSL on these UNEs in the first place. The Commission has already found that an ILEC “has no obligation to provide xDSL service over . . . [a] UNE-P carrier loop.”<sup>1</sup> Similarly, in its *Line Sharing Reconsideration Order*, the Commission rejected AT&T’s argument that ILECs should be required to provide DSL service to end users who obtain service from a CLEC using UNE platforms, and denied “AT&T’s request for clarification that under the *Line Sharing Order*, incumbent LECs are not permitted to deny their xDSL services to customers who obtain voice service from a competing carrier where the competing carrier agrees to the use of its *loop* for that purpose.”<sup>2</sup>

The Commission has already rejected AT&T’s request to extend Verizon VA’s obligations to provide resale on UNEs.<sup>3</sup> Therefore, the Commission declined to require Verizon to permit resale of xDSL over lines on which a CLEC provides voice service using a UNE loop or UNE-P.

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<sup>1</sup> *SBC Texas § 271 Order* ¶ 330.

<sup>2</sup> *Line Sharing Reconsideration Order* ¶ 26 (emphasis added).

<sup>3</sup> *CT Verizon § 271 Order* ¶ 33.

Moreover, just as AT&T's argument is foreclosed as a legal matter, it also is undermined by its own conduct. The issue of provisioning DSL over resold lines was the subject of limited discussion in the NY DSL Collaborative, in which AT&T has been an active participant, and the issue of resale over UNE loop facilities was never discussed in that collaborative. *See Verizon VA Ex. 16 at 64-65.* Thus, the industry has not had an opportunity to evaluate or address the technical or operational feasibility of such a service. Tr. 921. Until these issues can be addressed through appropriate industry fora, there is no basis for imposing new requirements on Verizon in the context of an isolated interconnection agreement.

As just one example of the complications that are entailed, a significant issue that must be addressed is the business relationship between AT&T and Verizon VA should Verizon VA provide DSL service over a loop purchased by AT&T. AT&T initially did not want such a relationship at all, as illustrated by its announcement in the NY DSL Collaborative that it did not want to partner with VADI in a line splitting scenario to provide VADI's DSL service over an unbundled loop purchased by AT&T. Tr. 748. Indeed, AT&T has steadfastly taken the position that it is not required to allow VADI, or any other data service provider, to provide DSL over an unbundled loop purchased by AT&T, although AT&T at its option could

elect to enter into business arrangement with other CLECs (or even affiliates of the ILEC) that provided for a service equivalent to line sharing offered by the ILEC. In all events, when AT&T acquires the unbundled loop from the ILEC (whether in the form of UNE-P or UNE-L), AT&T gains the right to use the entire loop to provide any telecommunications service. As such, without a prior arrangement with AT&T for joint use of a loop UNE obtained by AT&T, another carrier could not establish service using that loop.

Verizon VA Ex. 44.

Essentially, AT&T now seeks to bypass the collaborative process and force Verizon VA to provide DSL service under circumstances when it currently does not, but only when and

where AT&T unilaterally decides that Verizon VA should provide that service, and only on some as yet unspecified business terms unilaterally dictated by AT&T. As the Commission previously recognized, there is absolutely no basis for that demand in the Act, and it must be rejected.

### **C. CONTRACT PROPOSALS**

The parties' interconnection agreement should not include specific language to provide AT&T with advanced services for resale over resold voice lines or in the circumstance in which AT&T serves an end-user through a UNE-P or unbundled loop. First, such language is unnecessary in light of the contract language to which AT&T and Verizon VA have already agreed. Under § 12.1.1,<sup>4</sup> Verizon VA will provide to AT&T for resale "Verizon's Telecommunications Services (As Defined in the Act)" to the extent required by applicable law and subject to and in accordance with the terms and conditions set forth in Verizon's tariffs. Verizon is amending its applicable tariff to make available DSL over Resold Lines. Moreover, as explained above, Verizon VA is not legally required to provide resold DSL over unbundled loop facilities—whether through a UNE-P or stand alone loop—purchased by AT&T.

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<sup>4</sup> "12.1.1 As and to the extent required by Applicable Law, Verizon, directly or (at Verizon's option, in the case of Advanced Services -- as such term is defined by the FCC) through Verizon Advanced Data Inc. ("VADI"), a Virginia affiliate subject to Section 251(c) of the Act, will make available to AT&T, in accordance with Section 251(b) (1) of the Act, for resale, Verizon's Telecommunications Services (As Defined in the Act) (collectively, "Resold Services") subject to and in accordance with the terms and conditions set forth in Verizon's Tariffs and this Section 12; and, in the case of Advanced Services, VADI's federal and state tariffs (the "VADI Tariff")(as such tariffs are amended or otherwise in effect from time to time). The term "Resold Services" does not include any exchange access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by Verizon. To the extent required by Applicable Law, Verizon shall make available such Resold Services at the retail prices set forth in Verizon's Tariffs less the wholesale discount set forth in Exhibit A."

**Issue V-10     Resale of Vertical Features**

**AT&T             Must Verizon offer vertical features available for resale on a stand-alone basis?**

**A.        OVERVIEW**

Verizon VA cannot be required to provide AT&T with vertical features at wholesale rates set pursuant to § 252(d)(3) of the Act when AT&T does not also order the underlying dial tone line. The issue is not *whether* AT&T may purchase vertical features for resale without purchasing Verizon VA's dial tone: it can. The issue is how much AT&T must pay for those services when it purchases them on what is known as a "stand-alone" basis -- that is, without concurrently purchasing Verizon VA's dial tone line. Verizon VA's obligation to offer services for resale at wholesale rates is set forth in § 251(c)(4)(A) of the Act. Under that section, Verizon VA's obligation only extends to telecommunications services that Verizon VA "provides **at retail** to subscribers who are not telecommunications carriers." Section 251(c)(4)(A) (emphasis added). As several state commissions have held, because Verizon VA only offers its vertical features *at retail* to customers who also purchase Verizon VA's dial tone line, Verizon VA has no obligation under § 251(c)(4) to provide AT&T with those features on a stand-alone basis at the § 252(d)(3) wholesale discount rate. Rather, AT&T may purchase and resell custom calling features on a stand-alone basis on the same terms and conditions as Verizon VA currently offers to Enhanced Service Providers ("ESPs").

**B.        DISCUSSION**

A custom calling feature, also known as a vertical feature, is a telecommunications service that Verizon VA provides in conjunction with the basic dial tone service. Verizon VA Exhibit 3 at 3. Pursuant to Verizon VA's retail tariff, a retail customer must purchase a Verizon



VA basic dial tone line to order or use the vertical features Verizon VA offers at retail. *Id.*, citing Verizon VA General Services Tariff No. 203 §§ 21A, B1, and B7.

Section 251(c)(4) of the Act provides the pertinent standard by which to judge AT&T's request for stand-alone vertical features at a § 252(d)(3) discount. That section requires ILECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." As explained above, Verizon VA does not offer custom calling features on a stand-alone basis at retail. Accordingly, to the extent that AT&T seeks to purchase and resell these services on a stand-alone basis, it is not entitled to the wholesale discount. On the contrary, the Commission has expressly held that the "Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent does not offer to retail customers," nor does it require the LEC "to disaggregate a retail service into more discrete retail service."<sup>5</sup>

Several state commissions have correctly applied the standard set forth in § 251(c)(4) to reject CLEC attempts to disaggregate Verizon VA's retail service offering by seeking "stand-alone" vertical features at a § 252(d)(3) discount. On July 30, 2001, the New York Public Service Commission rejected AT&T's arguments on this issue. *NY (Verizon/AT&T) Arbitration Order* at 20 ("We will not require that vertical features be made available on a stand-alone basis."). This is consistent with the rejection by the state commission in Massachusetts of Sprint's attempt to get vertical features on a stand-alone basis for resale at the wholesale discount. See *MA (Sprint/Verizon) Arbitration Order*, at 27 ("Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the

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<sup>5</sup> *Local Competition Order* ¶¶ 872, 877.

Commission's *Local Competition* rules." See also, *MD (Sprint/Verizon) Arbitration Order*, at 10-11; *KY (Sprint/BellSouth) Arbitration Order*, at 3-4.

In support of its current request, AT&T observes that "Verizon's **dial tone line service** is available for purchase by retail customers on a stand-alone basis." AT&T Exhibit 4 at 8. That is true, but that is not the issue. The issue is whether **vertical features** are offered, at retail, on a stand-alone basis. They are not, and AT&T is therefore not entitled to the wholesale discount if it desires to purchase vertical services for resale on a stand-alone basis. AT&T's testimony on this issue does nothing more than demonstrate that AT&T is entitled to the wholesale discount if it purchases the dial tone line for resale on a stand-alone basis. Of course, in that instance, AT&T can also get the wholesale discount if it wants to resell vertical features.

Likewise, AT&T mistakenly claims that its assertions regarding what is "technically feasible" are dispositive of the issue. Verizon VA does not dispute that ESPs are permitted to purchase some vertical features, such as Call Forward Busy Line/Don't Answer, on a stand-alone basis for resale to end users. Such services are provided to ESPs under the FCC's Open Network Architecture ("ONA") rules, and a wholesale discount does not apply. In those situations, Verizon VA continues to provide the dial tone line, and the ESPs may purchase Call Forward Busy Line/Don't Answer in order to resell it to an end user in connection with a service such as voice messaging.<sup>6</sup> In that case, however, Verizon VA is **not** offering Call Forward Busy Line/Don't Answer on a stand-alone basis **at retail**. ESPs are purchasing the feature for resale to end users and are therefore operating as wholesalers.<sup>7</sup> Thus, the only situation in which

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<sup>6</sup> Verizon MA makes this service available as a complimentary network service pursuant to the FCC's Open Network Architecture orders.

<sup>7</sup> In a similar situation, the Commission has held that "while an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to  
(continued...)

Verizon VA provides Call Forward Busy Line/Don't Answer on a stand-alone basis is at wholesale, not at retail, and neither the ESPs nor AT&T are entitled to the wholesale discount. Indeed, AT&T's attempt to obtain the wholesale discount is nothing more than an attempt to gain an unfair advantage over ESPs, which could impair competition in the voice messaging market.

Finally, even apart from the fact that vertical features do not have to be provided at all, the § 251(c)(4) wholesale discount could not be applied to stand-alone vertical features in any event. That wholesale discount is intended to reflect the costs that Verizon VA would avoid if it were not providing *any* services at retail. If AT&T were only reselling a single vertical feature, however, and Verizon VA were continuing to provide the basic dial tone service (and other vertical features), Verizon VA would avoid few, if any, costs. Verizon VA, for example, would continue to incur the costs of taking retail customer orders; it would continue to incur the costs of billing and collection; and it would avoid few, if any, of the costs it incurs in marketing its services to end users. Accordingly, it would be unfair and inconsistent with the avoided cost analysis used to calculate the § 252(d)(3) wholesale discount if that discount is applied in a context in which Verizon VA continues to provide the retail dial tone service. Verizon VA Exhibit 107 at 363.

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the ultimate end-user, an incumbent LEC offering of DSL services to Internet Service Providers as an input component to the Internet Service Provider's high-speed Internet service offering **is not a retail offering.**" *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, at ¶ 19 (rel. Nov. 9, 1999) (emphasis added). The Commission also amended its rules "to clarify that advanced services sold to Internet Service Providers as an input component to the Internet Service Provider's own retail Internet service offering **are not subject to the discounted resale obligations of section 251(c)(4).**" *Id.* at ¶ 22 (emphasis added).

### C. CONTRACT PROPOSALS

The contract language to which AT&T and Verizon VA already have agreed puts to rest any claim by AT&T that it is entitled to a § 252(d)(3) discount on its resale of vertical features without the commensurate purchase for resale of Verizon VA's dial tone service. That is, AT&T and Verizon VA already have agreed in § 12.1.1<sup>8</sup> that to the extent required by applicable law and subject to and in accordance with the terms and conditions set forth in Verizon's tariffs, Verizon VA shall make available to AT&T for resale "Verizon's Telecommunications Services (As Defined in the Act)." Moreover, AT&T and Verizon VA have already agreed that "to the extent required by Applicable Law, Verizon VA shall make available such Resold Services at the retail prices set forth in Verizon's Tariffs less the wholesale discount set forth in" the parties' pricing exhibit. As explained above, § 251(d)(4) does not require Verizon VA to provide a telecommunications service for resale at a § 252(c)(3) discount when Verizon VA does not offer such service at retail to subscribers who are not telecommunications carriers. No matter what other contract language AT&T opposes, the language to which the parties already have agreed as well as the language of § 251(d)(4) requires rejection of AT&T's current claim that Verizon VA must provide it with stand-alone vertical features for resale at a § 252(c)(3) discount.

- **§ 12.8.2**

AT&T also claims that the Commission should reject the portion of Verizon VA's proposed § 12.8.2 that makes clear that various voice mail services are not subject to a resale requirement under the Act for the simple reason that they are not telecommunications services as defined in the Act. In fact, the Commission previously held precisely that. 47 C.F.R.

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<sup>8</sup> See *supra* note 4.

§ 67.702(a).<sup>9</sup> As such, voice mail service is not subject to a resale requirement under the Act, let alone a requirement that it be made available at a wholesale discount under §§ 251(c)(4) and 252(d)(3). Verizon VA's proposed § 12.8.2 should therefore be included in the parties' interconnection agreement.

- **§ 12.8.5**

Also, in conjunction with AT&T's position on the availability of a § 252(c)(3) discount for stand-alone vertical features, AT&T claims that the Commission should reject Verizon VA's proposed § 12.8.5:

Except as otherwise required by Applicable Law, Verizon reserves the right to terminate provision of services and products (including, but not limited to, Telecommunications Services and the services listed in Sections 12.8.2 and 12.8.3, above) to any person who ceases to purchase Verizon Retail Telecommunications Service dial tone line service from Verizon.

This provision is merely a clarification to § 12.1.1. It makes clear that those services that are not available as a stand alone service do not have to be provided if a carrier ceases to purchase for resale the underlying dial tone line from Verizon VA. Accordingly, Verizon VA's proposed § 12.8.5 should be included in the parties' interconnection agreement.

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<sup>9</sup> "For the purpose of this subpart, the term 'enhanced service' shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act."